

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA  
STATESBORO DIVISION

ANTONIO SIMMONS,

Plaintiff,

v. 6:14-cv-12

STANLEY WILLIAMS, et al.,

Defendants.

ORDER


Plaintiff Antonio Simmons brings this action challenging conditions of his confinement at Smith State Prison. ECF No. 24. On April 8, 2014, the Magistrate Judge issued a Report & Recommendation ("R&R") pursuant to 28 U.S.C. § 1915A dismissing some of Simmons's claims as implausible. ECF No. 9. Simmons objected, ECF No. 11, and subsequently amended his complaint on June 3. ECF No. 24. The Defendants did not oppose Simmons's filing of an amended complaint. ECF No. 26.

The Court has reviewed Simmons's amended complaint and conducted its own frivolity review. Even given the amended complaint, the Magistrate Judge's reasoning stands and the Court **ADOPTS** the R&R as its opinion as to the amended complaint, with slight modification. The substantive due process claim and equal protection claim are **DISMISSED**. All preliminary injunctive relief is **DENIED**. The Magistrate Judge properly applied the standard for obtaining temporary or preliminary relief.

Additionally, given a liberal construction of the *pro se* pleading, *Walker v. Dugger*, 860 F.2d 1010, 1011 (11th Cir. 1988), the Court discerns a cognizable claim for violations of the Eighth Amendment. Although he does not mention the Eighth Amendment, Simmons alleges deprivation of adequate nutrition and weight loss, which is sufficient to support a claim pursuant to 42 U.S.C. § 1983. *Williams v. Humphreys*, No. 5:04-cv-053, 2005 WL 4905109, at \*1, 9-10 (S.D. Ga. Sept. 13, 2005). Simmons may proceed on this claim.

Simmons has also filed a Motion for Entry of Default against the Defendants. ECF No. 30. Pursuant to Federal Rule of Civil Procedure 55(a), default is appropriate only if a defendant "has failed to plead or otherwise defend" the case. Such has not occurred here. Defendants responded to Simmons's motion to amend his complaint, ECF No. 26, and sought additional time to respond, ECF No. 29. The Court **DENIES** the Motion for Entry of Default. The Court **GRANTS** the Defendants thirty days from this order to respond to the Amended Complaint in light of the Court's action on the R&R. The Defendants may withdraw their Waiver of Reply, ECF No. 32, which they filed out of an abundance of caution.

This 8 day of July 2014.

  
B. AVANT EDENFIELD, JUDGE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA